

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 20, 2008

No. 07-10888
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

LYNN SMIRL

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:07-CR-3-16

Before GARZA, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Lynn Smirl has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Smirl has filed a response. The record is insufficiently developed to allow consideration at this time of Smirl's claim of ineffective assistance of counsel; such claims generally "cannot be resolved on direct appeal when [they have] not been raised before the district court since no opportunity existed to

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

develop the record on the merits of the allegations.” *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006) (internal quotation marks and citation omitted). Our independent review of the record, counsel’s brief, and Smirl’s response discloses no nonfrivolous issue for appeal. Accordingly, counsel’s motion for leave to withdraw is GRANTED, his motion for the appointment of substitute counsel is DENIED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. See 5TH CIR. R. 42.2.